

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kenny Robinson, Jr.	Team: Team # 3	CCRB Case #: 200608887	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 06/30/2006 8:15 AM	Location of Incident: 75th Street and Broadway	Precinct: 110	18 Mo. SOL 12/30/2007	EO SOL 12/30/2007	
Date/Time CV Reported Thu, 07/06/2006 2:30 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 07/06/2006 2:30 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Won Chang	29627	928055	110 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM William Ellenberger	23416	926801	110 PCT
2. POF Jennifer Lew	14257	935181	110 PCT
3. SGT Erik Casiano	03891	925171	110 PCT
4. SGT Theodore Pergolizzi	04290	905403	110 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Won Chang	Abuse: PO Won Chang questioned § 87(2)(b) and § 87(2)(b)	
B.POM Won Chang	Force: PO Won Chang pointed his gun at § 87(2)(b) and § 87(2)(b)	
C.POM Won Chang	Abuse: PO Won Chang searched an individual's bag.	
D.POM Won Chang	Abuse: PO Won Chang threatened to arrest § 87(2)(b) and § 87(2)(b)	

### Synopsis

§ 87(2)(b) filed this complaint by phone on July 6, 2006. § 87(2)(b) provided the initial narrative for this incident, but he did not provide an official statement. At the time that the complaint was filed § 87(2)(b) provided the names of several other individuals that he was with. The only victim who participated in the investigation was § 87(2)(b) § 87(2)(b) and the synopsis is based upon his account. § 87(2)(b) stated that on June 30, 2006, he was gathered with several individuals in front of a residential building located near the intersection of 75<sup>th</sup> Street and Broadway in Queens. The investigation determined that the group included:

§ 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b). While standing in front of the aforementioned location, PO Won Chang and PO William Ellenberger approached the group of males. PO Chang asked the males what they were doing and he pointed his gun at them (allegations A and B). § 87(2)(b) stated that one of the males he was with had a bag and PO Chang asked whom the bag belonged to. None of them stated that the bag was theirs. PO Chang instructed § 87(2)(b) to remove the item from the bag and it was evinced that item was bolt cutters (allegation C). PO Chang instructed the males to sit on the ground. They were handcuffed and taken to the 110<sup>th</sup> Precinct stationhouse. § 87(2)(b) alleged that PO Chang told them that each time he saw the group of males, he was going to arrest them (allegation D).

It is undisputed that PO Chang approached the males and asked them what they were doing. § 87(2)(b), § 87(2)(b)

§ 87(2)(b)

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### Summary of Complaint

§ 87(2)(b) was interviewed § 87(2)(b) on August 29, 2006 (encl. 4D – 4F).

On June 30, 2006, § 87(2)(b) was at an internet café with a group of six males in Queens. § 87(2)(b) did not know the names of all the individuals that were with him, as they were friends of friends. The names § 87(2)(b) could recall are § 87(2)(b) and “§ 87(2)(b). The investigation revealed that the other males who were present are § 87(2)(b) who is also known as § 87(2)(b) and § 87(2)(b). It remains unclear which of the individuals is known as “§ 87(2)(b). § 87(2)(b) was wearing army pants that had two front pockets by his waist and one large cargo pocket, a white T-shirt and sneakers. At approximately 6:00 AM, § 87(2)(b) and the group of persons that he was with decided to leave the café. They were walked along 75<sup>th</sup> Street, until they got to Broadway. The six males stopped in front of a residential building and smoked some marijuana. Approximately thirty minutes later, two plainclothes officers in an unmarked vehicle approached § 87(2)(b) and his friends. They were finished smoking the marijuana at the time that the officers approached them. § 87(2)(b) assumed that someone called the police and stated that they were stealing.

PO #1 was the driver of the car and he exited the vehicle first. PO #1 was described as a tall Asian male, with black spiky hair, and had a medium build. The investigation revealed that PO #1 was PO Won Chang. PO #2 was the passenger of the first unmarked vehicle and he was described as a chubby white male. The investigation revealed that PO #2 was PO William Ellenberger.

When PO Chang approached the males he asked them what they were doing. One of the individuals replied that they were not doing anything, but trying to figure out what they were going to do later that day. PO Chang instructed the individuals to get against the wall and PO Chang and PO Ellenberger frisked them. As the officers were leaving, PO Chang asked what was in the bag. Only the owner of the bag knew what was in the bag but he did not want to speak up. § 87(2)(b) did not state whom the bag belonged to. PO Chang instructed § 87(2)(b) to take the object out of the bag. § 87(2)(b) took out bolt cutters from the bag. PO Chang started laughing and stated, “That’s what I wanted to see.” PO Chang drew and

pointed his weapon at the individuals and told them to get on the ground. PO Ellenberger immediately came and stood next to PO Chang. While PO Chang was talking with the individuals, PO Ellenberger was checking the area with a flashlight.

A marked vehicle arrived approximately ten minutes after the unmarked car. There were two uniformed officers, PO #3 and PO #4, in the marked car. PO #3 was a chubby Hispanic male, who wore glasses, and had a goatee. § 87(2)(b) could not provide a description of PO #4. The identities of PO #3 and PO #4 remain unknown. § 87(2)(b) and his friends were searched but he does not recall if it was PO #3 or PO #4 that conducted the searches. While PO #3 was searching § 87(2)(b) PO #3 removed two one-dollar coins from § 87(2)(b)'s pocket. PO #3 then pulled § 87(2)(b) to the side and asked him where he got the coins. PO #3 then yelled at § 87(2)(b) and asked him if he had stolen the coins, which he answered in the negative. PO #3 went into the laundry room of the building. § 87(2)(b) believed that he did this to see if he had stolen the coins from the laundry machine. After the individuals were searched they were told to lie on the ground and they were handcuffed.

While the individuals were lying on the ground PO Chang asked the six males who did the bolt cutters belong to. None of the individuals replied. While they were on the ground, officers checked their identification. § 87(2)(b) did not have any identification, but he was able to provide his name and address. After being on the ground for ten minutes, the officers instructed § 87(2)(b) to go home. § 87(2)(b)'s handcuffs were removed and he left. § 87(2)(b) reached the corner of the block and realized that PO #3 had not returned his coins. § 87(2)(b) returned and asked for his coins. Once he asked for his coins, an officer from the first vehicle told § 87(2)(b) to stay and ordered that he be handcuffed. PO #3 handcuffed § 87(2)(b). A van arrived on the scene and the individuals were taken to the 110<sup>th</sup> Precinct stationhouse.

### **Results of Investigation**

#### **Attempts to Locate/Contact Additional Victims (encl. 9A – 9J)**

A search of the Booking Arraignment Disposition Inquiry System revealed that § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b) were arrested on § 87(2)(b) at 8:15 AM on 41<sup>st</sup> Avenue and 75<sup>th</sup> Street.

Between July 13, 2006, and August 24, 2006, an initial contact letter, a final please letter and five telephone calls were placed to the residences of § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b). Each time a call was placed a message was left requesting that the respective individual contacted the CCRB. The telephone number that was obtained from § 87(2)(b) for § 87(2)(b)'s address was contacted and on August 15, 2006, an individual answered the phone and stated that no one with the first name of § 87(2)(b) resided there.

As of August 15, 2007, § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b) did not participate in this investigation and they have not contacted the CCRB.

#### **Identification of Officers Interviewed**

At the time that § 87(2)(b) filed this complaint, he stated that PO Chang was his arresting officer, which § 87(2)(b)'s arrest report confirmed. After PO Chang was interviewed it was determined that a sergeant and a prisoner van came to the location of the incident. However, PO Chang could not recall who the responding officers were. The 110<sup>th</sup> Precinct's second tour roll call listed PO Ellenberger as PO Chang's partner. However, PO Ellenberger was Line-of-Duty and the CCRB could not interview him until June 19, 2007, shortly after he returned to official duty. It had to be determined who the sergeant was and the officer who drove the prisoner van. The second tour roll call only listed one van as being used and PO Jennifer Lew was one of the officers assigned to the van and therefore she was interviewed. The roll call did not list any officers working in the capacity of the patrol supervisor. However, there was an entry in the command log at 8:00 AM, which evinced that Sgt. Eric Casiano, a Hispanic male, was present for duty. § 87(2)(b) stated that a Hispanic male officer responded to the scene and therefore Sgt. Casiano was interviewed. During Sgt. Casiano's interview he stated that when he arrived at the incident location that Sgt. Pergolizzi was present. Therefore, Sgt. Pergolizzi was interviewed.

## **Officers' Statements**

### **PO Won Chang's Statements: Arrest Reports (encl. 5A – 5R)**

§ 87(2)(b) and § 87(2)(b)'s arrest reports evinced that they were observed on June 30, 2006, in possession of burglary tools. § 87(2)(b) report also stated that a search incident to a lawful arrest revealed that he was in possession of marijuana.

### **CCRB Statement (encl. 5S – 5V)**

PO Won Chang was interviewed at the CCRB on March 27, 2007. On June 30, 2006, PO Chang worked from 7:00 AM until 3:35 PM and he was assigned to the fireworks auto. PO Chang worked with PO William Ellenberger and they were uniformed and assigned to an unmarked vehicle. PO Chang had a memo book entry pertaining to this incident and it evinced that six people were arrested at 75<sup>th</sup> Street and 41<sup>st</sup> Avenue (encl. 5S – 5T).

On June 30, 2006, at approximately 8:00 AM, PO Chang observed six people standing in front of a garage door and it appeared that they were doing something to it. PO Chang stated that he believed that the males were possibly attempting to break into the garage that they were standing in front of, as three of the males were facing the garage and the others appeared to be looking out. PO Chang approached the males and asked them what they were doing. In addition to the males' behavior, PO Chang articulated that he approached the males because he recognized two of the individuals, whom are gang-affiliated and have been arrested for possession of stolen property. When PO Chang approached the males they dropped a black bag, which he was able to see the handles of a bolt cutter, and the males attempted to flee the scene. PO Chang stated that once he saw the bolt cutters he knew that he was going to arrest the males, which he eventually did. PO Chang identified himself as a police officer and told the males not to move and to get on the ground. PO Chang stated that the males were at first apprehensive, but then after a couple minutes, most of the males complied with his instructions and sat on the ground. PO Chang stated that one of the males refused to comply, so he grabbed him and PO Chang told the male to get on the ground. The male then complied with PO Chang's instructions. At this time, PO Ellenberger was standing next to PO Chang. PO Chang and PO Ellenberger then frisked the males. PO Chang explicated that he feared for his safety, as there were six males and only two officers and that one of the males had a bulge on his waistband. PO Chang asked the males who the black bag belonged to and none of the males admitted that the bag belonged to them. PO Chang stated that it was possible that an additional sector was called, as they only had four pairs of handcuffs, but he could not recall what officers arrived on the scene. The males were handcuffed and then searched. The males were arrested for criminal possession of burglary tools. At no point during the duration of this incident were any of the males allowed to leave the scene. PO Chang did not recall drawing his gun, and he did not recall who the supervisor was that verified the arrests. PO Chang stated that he did not threaten to arrest any of the males.

**PO William Ellenberger** was interviewed at the CCRB on June 19, 2007 (encl. 5W - 5AA).

On June 30, 2006, PO Ellenberger worked from 7:05 AM until 3:40 PM and he was assigned to the fireworks auto and he was specifically responsible for confiscating fireworks. PO Ellenberger worked with PO Chang and they were uniformed and assigned to an unmarked vehicle. PO Ellenberger had a memo book entry pertaining to this incident and it evinced that six people were arrested.

PO Ellenberger stated that he and PO Chang were driving in a burglary prone area, 75<sup>th</sup> Street and Broadway in Queens, when they observed a group of males hanging out at the back of a building near an alleyway. PO Chang articulated to PO Ellenberger that he recognized some of the individuals as being "allegedly" gang-affiliated. PO Chang and PO Ellenberger approached the group of males and they asked them what they were doing. PO Ellenberger stated that males did not really respond and that they were acting slightly weird, as though they were attempting to hide or conceal something, and that they were being evasive when they answered the officers' questions. PO Ellenberger could not recall if he smelled marijuana when he approached the individuals. PO Ellenberger recalled that there was a plastic bag between two of the individuals and they were asked to whom the bag belonged. None of the males took ownership of the bag. Somehow the bag was "moved," but PO Ellenberger could not recall exactly what happened, however, he recalled hearing a "heavy metal object," which raised his level of suspicion. PO Ellenberger and PO Chang drew their firearms because there were six males and only two officers, they

were uncertain of what was in the bag, they feared for their safety and they believed that it could have possibly been a gun. The males were instructed to get on the ground, which they complied with. It was learned that the object in the bag was a pair of bolt cutters, but PO Ellenberger could not recall how this happened. A radio transmission was put over the air requesting additional units. Additional officers, whom PO Ellenberger could not recall, came to the scene. The individual were handcuffed, and taken back to the stationhouse. PO Ellenberger stated that he was unsure of when the males were frisked and searched, but he believed that it was incident to the arrest. None of the males were ever allowed to leave the scene. PO Ellenberger never heard PO Chang threaten to arrest any of the males.

**Sgt. Theodore Pergolizzi** was interviewed at the CCRB on June 19, 2007 (encl. 5AB – 5AE).

Sgt. Pergolizzi worked from 11:05 PM on June 29, 2006 until 10:02 AM on June 30, 2006. Sgt. Pergolizzi was the patrol supervisor for the 110<sup>th</sup> Precinct and he was working with PO Hector Jordan. The officers were uniformed and assigned to a motor vehicle. Sgt. Pergolizzi had a memo book entry pertaining to this incident, which evinced that he backed up the officers who were assigned to the fireworks auto and that six persons were arrested (encl. 5AB – 5AC).

On June 30, 2006, at approximately 8:00 AM, Sgt. Pergolizzi received a radio transmission for back up at 75<sup>th</sup> Street and Broadway in Queens. Sgt. Pergolizzi stated that he was uncertain of the officer's actions prior to his arrival. When Sgt. Pergolizzi arrived on the scene he saw six males, who were not yet handcuffed, seated on the sidewalk and warrant checks were being conducted. Sgt. Pergolizzi stated that the extent of his involvement that with a couple of the males was asking them if they had already provided the officers with their identification. Sgt. Pergolizzi stated that he witnessed some of the males being frisked and searched, but he did not conduct any of them and that the frisk and search were incident to the arrest. The males were handcuffed, but Sgt. Pergolizzi did not handcuff any of them. Sgt. Casiano later arrived on the scene in a marked van, as a means to transport the six prisoners back to the stationhouse. Sgt. Pergolizzi did not witness any of the officers drawing their guns. Sgt. Pergolizzi also stated that he did not have any conversation with any of the males regarding dollar coins and that at no point while he was on the scene were any of the males allowed to leave.

**Sgt. Eric Casiano** was interviewed at the CCRB on May 30, 2007 (encl. 5AF – 5AJ).

On June 30, 2006, Sgt. Casiano worked from 8:10 AM until 6:57 PM. Sgt. Casiano was doing administrative duties from the beginning of his tour until 10:00 AM, at which time he became the patrol supervisor and he began working with PO Wayne Kam. Sgt. Casiano did not have any memo book entries concerning this incident (encl. 5AF – 5AH).

On June 30, 2006, at 8:10 AM, Sgt. Casiano entered the 110<sup>th</sup> Precinct stationhouse to complete some paperwork. Approximately five minutes after arriving, Sgt. Pergolizzi requested that a prisoner van be sent to 75<sup>th</sup> Street and Broadway in Queens, to transport six prisoners. Sgt. Casiano drove the prisoner van alone to the location. When Sgt. Casiano arrived, Sgt. Pergolizzi, PO Chang, and PO Ellenberger were on the scene and he saw six handcuffed males. Sgt. Casiano could not recall if the males were standing or sitting, but he recalled that they were on the sidewalk. Sgt. Casiano exited the vehicle and guided the officers, who were escorting the six males, to the prisoner van. Sgt. Casiano did not interact with any of the males and he never frisked or searched any of the males. Sgt. Casiano did not speak to any of the males and he never had a conversation regarding dollar coins with any of them. The six males were transported to the stationhouse.

**PO Jennifer Lew** was interviewed at the CCRB on April 27, 2007 (encl. 5AK - AO).

On June 30, 2006, PO Lew worked from 10:00 AM until 6:35 PM, as a member of the mobile response unit for the 110<sup>th</sup> Precinct. PO Lew could not remember whom she worked with on the date of incident but she recalled there were several other officers, as they were responsible for any disputes that occurred during the World Cup games. The officers were assigned to a marked van. She did not have any memo book entries pertaining to this incident (encl. 5AK – 5AM)

PO Lew stated that on the date of incident she did not respond 75<sup>th</sup> Street and Broadway in Queens. She also stated that she did not pick up six persons who were arrested on the date of incident. PO Lew was not working at the time of incident and during her tour she was mostly stationed at Corona Avenue and Junction Boulevard, which is approximately two miles away from the incident location.

#### **Police Documents**

##### **SPRINT Report F03102** (encl. 6A – 6B)

The report evinced that at 7:51 AM, on June 30, 2006, there was a radio transmission for back up at 75<sup>th</sup> Street and 41<sup>st</sup> Avenue in Queens. The report further evinced that a sergeant and an unmarked vehicle responded to the scene. At 8:15 AM, six people were arrested and a van was called to the scene to transport the prisoners.

##### **Arrest Reports** (encl. 5A – 5R)

These reports evinced that § 87(2)(b) § 87(2)(b) and § 87(2)(b) were arrested for violating New York State Penal Law 140.35, which is possession of burglar's tools, and 240.20, which is disorderly conduct, subsection 5, which is obstructing vehicular or pedestrian traffic, and subsection 6, which is congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse. § 87(2)(b) was also charged with violating New York State Penal Law 221.05, which is unlawful possession of marijuana.

##### **Command Log** (encl. 6C – 6E)

There are entries for § 87(2)(b) § 87(2)(b) and § 87(2)(b). The entries evinced that the six males were arrested on 75<sup>th</sup> Street and 41<sup>st</sup> Avenue in Queens for possession of burglary tools. Their physical condition was apparently normal. There was also an entry, which illustrated that Sgt. Casiano was present for duty at 8:00 AM on June 30, 2006.

##### **Roll Call** (encl. 6F – 6H)

The 110<sup>th</sup> Precinct's second tour roll call for June 30, 2006, confirmed that PO Chang and PO Ellenberger were working and assigned to the firework apprehension unit.

§ 87(2)(b)

#### **Criminal Conviction History**

§ 87(2)(b) has not been convicted of any crimes in New York City.

##### **PO Won Chang's CCRB Histories** (encl. 2A)

PO Chang does not have any substantiated allegations that have resulted in the imposition of discipline during his six-year tenures.

##### **§ 87(2)(b)'s CCRB History** (encl. 3A)

§ 87(2)(b) does not have any other complaints filed with the CCRB.

#### **Conclusions and Recommendations**

##### **Identification of Subject Officers**

PO Chang admitted to questioning § 87(2)(b) § 87(2)(b) and § 87(2)(b). Therefore, allegation A is pleaded against him. § 87(2)(b) alleged that an Asian male officer instructed § 87(2)(b) to remove the bolt cutters from the bag. § 87(2)(b) stated this same officer drew and pointed his gun at the group of males, and threatened to arrest them. The only Asian male officer on the scene was PO Chang and therefore allegations B, C, and D are pleaded against him.

### Disputed and Undisputed Facts

It is undisputed that PO Ellenberger and PO Chang questioned § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) § 87(2)(g)

§ 87(2)(b), § 87(2)

§ 87(2)(g)

#### **Allegation A: PO Won Chang questioned § 87(2)(b) § 87(2)(b) § 87(2)(b)**

§ 87(2)(b) and § 87(2)(b)

It is undisputed that PO Chang questioned § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b) PO Chang stated that he approached the males because he observed the six people standing in front of a garage door, in a burglary prone location, and it appeared that they were doing something to it. The males were standing in front of a garage and PO Chang believed that the males were possibly attempting to break into the garage, as three of the males were facing the garage and the others appeared to be looking out. In addition to the males' behavior, PO Chang articulated that he approached them because he recognized two of the individuals, whom are gang-affiliated and have previously been arrested for possession of stolen property. When PO Chang approached the males he asked them what they were doing, which § 87(2)(b) corroborated.

According to the case of *People v Debour*, the type of stop that PO Chang effectuated is classified as a common-law inquiry. In order to execute this kind of stop, an officer must "possess a founded suspicion that criminal activity is afoot" (encl. 1D). The purpose of implementing a common law inquiry is to "gain explanatory information." § 87(2)(g)

§ 87(2)(g)

**Allegation B: PO Won Chang pointed his gun at questioned** § 87(2)(b) § 87(2)(b)

§ 87(2)(b) and § 87(2)(b)

§ 87(2)(b) alleged that PO Chang pointed his gun at him and the other males that he was with. PO Chang stated that he did not recall pointing or drawing his gun at the individuals, but because he did not recall does not mean that he did not do it. PO Ellenberger stated that both he and PO Chang drew their guns, but they did not point them. The NYPD has given an officer broad discretion to display his weapon, especially when he feels his life or another is endangered. In the OATH case *PD v Glinner*, the NYPD's broad discretion has been interpreted to mean that an officer can display his firearm "when he reasonably fears for his safety" based upon "an objective evaluation of the realities of the encounter as it occurred" (encl. 1A – 1C). § 87(2)(g)

**Allegation C: PO Won Chang searched an individual's bag.**

PO Chang stated that when he approached the males that they dropped a bag, which he was able to see contained bolt cutters. PO Chang asked the males whom the bag belonged to and none of them admitted that the bag belonged to them. According to Kamins' *Search and Seizure* if a "defendant disclaims ownership or any possessory interest in property, this will normally be sufficient proof to abandon," and "an officer is permitted to search the bag because the suspect has verbally renounced any expectation of privacy in the property" (encl. § 87(2)(g))

**Allegation D: PO Won Chang threatened to arrest** § 87(2)(b) § 87(2)(b) § 87(2)(b)

§ 87(2)(b) and § 87(2)(b)

§ 87(2)(b) alleged that PO Chang threatened to arrest the group of males whenever he saw them. None of the officers present heard PO Chang make this remark. § 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: